



Entered on Docket
April 21, 2010

A handwritten signature in black ink, appearing to read "R. B. Riegle".

Hon. Linda B. Riegle
United States Bankruptcy Judge

THE LAW OFFICES OF RANDOLPH H. GOLDBERG
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

**LEE GASTON &
IRMA GASTON**

Debtor(s).

Case No.: BK-S-09-22743-LBR
Chapter 13
Trustee: Kathleen Leavitt

Date: 3/25/2010
Time: 2:30 p.m.

ORDER TO VALUE COLLATERAL; ORDER TO AVOID LIEN

THIS MATTER having come before the Court for a hearing on **MARCH 25, 2010**, on Debtor's MOTION TO VALUE COLLATERAL; MOTION TO AVOID LIEN, and based upon the papers and pleadings on file herein, and good cause appearing; the Court finds as follows:

1. The Debtor's principal residence located at **1512 PALAMINO FARM WAY, N LAS VEGAS, NV 89081** (the "Subject Property") is valued at **\$165,000.00** as of the date of filing Debtor's Chapter 13 Petition.

2. The Subject Property is collateral for senior secured claim of **COUNTRYWIDE HOME LENDING** (“Senior Leinholder”).

[Check only one box, and fill in the blanks]

Senior Lienholder has filed a Proof of Claim related to such claim, (N/A) and such Proof of Claim claims a debt of \$. Senior Lienholder's Proof of Claim indicates that Senior Lienholder has assigned to this claim.

[or]

Senior Lienholder has **not** filed a Proof of Claim related to its claim, but has assigned **COUNTRYWIDE HOME LENDING** to this claim. The Debtor's schedules list the amount of Senior Lienholder's claims as **\$174,459.00**.

3. The Subject Property is also collateral for a junior secured claim of **COUNTRYWIDE HOME LENDING** ("Junior Lienholder").

[Check only one box, and fill in the blanks]

Junior Lienholder has filed a Proof of Claim (29-1) related to such claim, and
Claim claims a debt of **\$176,831.56**. Junior Lienholder's Proof of Claim indicates that
Lienholder has assigned **COUNTRYWIDE HOME LENDING** to this claim.

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- Junior Lienholder has *not* filed a Proof of Claim related to its claim, but has to this claim. The Debtor's schedules list the amount of Junior Lienholder's

4. Given the above, Junior Lienholder's interest in the Debtor's interest in the Subject Property has no value.

1 THEREFORE, IT IS HEREBY ORDERED THAT, pursuant to Zimmer v. PSB Lending
2 Corp. (In re Zimmer), 313 F. 3d 1220 (9th Cir. 2002), and 11 U.S.C. §§ 506(a) and 506(d), Junior
3 Lienholder's claim is unsecured, and shall be treated as unsecured for all purposes in this case,
4 including the manner in which such claim is treated and paid in Debtor's chapter 13 plan; and

5 IT IS FURTHER ORDERED THAT, should debtor receive a discharge in this case, Junior
6 Lienholder shall as soon as practicable thereafter take all necessary and appropriate steps to
7 remove its lien of record, and to ensure that Debtor's title to the Subject Property is clear of any
8 cloud on title related to Junior Lienholder's claim. This court hereby reserves jurisdiction with
9 respect to any dispute over the actions necessary to comply with this paragraph; and

10 IT IS FURTHER ORDERED THAT, should this case be converted to one under another
11 chapter, 11 U.S.C. § 348(f) shall govern the continued validity of this order; and

12 IT IS FURTHER ORDERED THAT, should this case be dismissed , 11 U.S.C. §
13 349(b)(1)-(3) shall govern the continuing validity of this order; and

14 IT IS FURTHER ORDERED THAT nothing in this order shall be deemed to be an
15 allowance or disallowance of any claim of Senior Lienholder or Junior Lienholder, and any party
16 in interest, including the Debtor or the Trustee, may hereafter object to either claim on any ground
17 recognized by the Bankruptcy Code.

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24 DATED this 13th day of APRIL, 2010

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7 THE LAW OFFICES OF
8 RANDOLPH H. GOLDBERG

9 By /S/ RANDOLPH GOLDBERG ESQ.
10 RANDOLPH H. GOLDBERG, ESQ.
11 4000 S. Eastern
12 Suite 200
13 Las Vegas, Nevada 89119
14 Attorney for Debtor

15 APPROVED AS TO FORM AND CONTENT

16
17 ~~CHAPTER 13 TRUSTEE~~

18
19 ~~KATHLEEN LEAVITT, TRUSTEE~~
20 201 S. Las Vegas Blvd Ste 200
21 Las Vegas, NV 89101

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2 **LR 9021. ENTRY OF JUDGMENTS AND ORDERS.**

3 (c) Certification language.

4 (1) Documents listed in subsection (a) above must be submitted to the court with the following certification
from the submitting counsel:

5 In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

6 The court has waived the requirement of approval under LR 9021.

7 This is a chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a
8 copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties
9 who appeared at the hearing, and each has approved or disapproved the order, or failed to respond,
10 as indicated below [list each party and whether the party has approved, disapproved, or failed to
11 respond to the document]:

12 **KATHLEEN A. LEAVITT**
13 201 LAS VEGAS BLVD., SO. #200
14 LAS VEGAS, NV 89101

15 Approved

16 Disapproved

17 Failed to respond

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21 This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all
22 counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and
23 each has approved or disapproved the order, or failed to respond, as indicated below [list each party
24 and whether the party has approved, disapproved, or failed to respond to the document]:

25 I certify that I have served a copy of this order with the motion, and no parties appeared or filed
26 written objections.

27 (2) No language other than ““approved”” or ““disapproved”” may appear above opposing counsel’s
signature; and

28 (3) Unless the court orders otherwise, ““opposing counsel”” means any attorney who appeared at the hearing
29 regarding the matter that is the subject of the order or who filed objections.

30 (4) Variation from the certification language indicated in paragraph (c)(1) may be cause for returning the
31 draft order unsigned by the court.

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38 /S/MAILE HANSEN
39 an employee of
40 THE LAW OFFICES OF
41 RANDOLPH H. GOLDBERG, ESQ.